

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD COCHRANE,

Petitioner,

Case Number 09-11963
Honorable David M. Lawson

v.

DEBRA SCUTT,

Respondent.

ORDER GRANTING IN PART AND DENYING IN PART
CERTIFICATE OF APPEALABILITY

The petitioner filed a petition for a writ of habeas corpus on May 21, 2009. On February 27, 2013,, the Court entered an opinion and order denying the petition, determining that the petitioner's the trial court's denial of the petitioner's motions to adjourn his retrial and for an independent psychological evaluation of the complainant did not render his trial fundamentally unfair, that petitioner's claim based on the trial court's admission of inconsistent statements by the complainant was not cognizable on federal habeas review, that Michigan Court of Appeal's determination that the trial court did not impose an excessive sentence to punish the petitioner for exercising his right to a trial was not an unreasonable determination of the facts, and that the petitioner had offered no evidence that prosecution witnesses and members of the complainant's family made contact with jurors prior to their deliberations. On this basis, the Court entered judgment against the petitioner.

Pursuant to Rule 11 of the Rules Governing Section 2254 Proceedings, which was amended as of December 1, 2009:

The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but

may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.

Rule 11, Rules Governing Section 2254 Proceedings.

A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). To receive a certificate of appealability, “a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotes and citations omitted).

Concerning the issue of the petitioner’s sentencing, the Court finds that reasonable jurists could debate whether the sentencing court considered the petitioner’s exercise of his trial right as a factor in the severity of the sentence. Therefore, the Court will grant a certificate of appealability on this issue. However, the Court finds that reasonable jurists could not debate the resolution of any of the other claims raised by the petitioner. Therefore, the Court will deny a certificate of appealability on the remaining claims.

Accordingly, it is **ORDERED** that a certificate of appealability is **GRANTED** on the petitioner’s claim that the sentencing court considered the petitioner’s exercise of his trial right as a factor in the severity of the sentence.

It is further **ORDERED** that a certificate of appealability is **DENIED** as to the petitioner's remaining claims.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: February 22, 2013

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 22, 2013.

s/Deborah R. Tofil
DEBORAH R. TOFIL